UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMAR CHUKWUEZE, Plaintiff, -v- NYCERS, Defendant.	:	10 Civ. 8133 (JMF) MEMORANDUM OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

This employment discrimination case, filed on October 26, 2010, stems from Plaintiff Omar Chukwueze's employment as an Assistant Retirement Benefits Manager at the New York City Employees' Retirement System ("NYCERS") from September 18, 2006, until his termination on January 21, 2009. (Docket No. 7). On August 23, 2013, Plaintiff moved for leave to file a second amended complaint adding claims against NYCERS under the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 296, and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8–107, and claims against his former supervisor, Michelle Gaddy, under both those laws and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* In addition, Chukwueze seeks to enjoin Defendant NYCERS from retaliating against him. (Docket No. 51).

Under Federal Rule of Civil Procedure 15, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Accordingly, "[t]he Second Circuit has held that a Rule 15(a) motion should be denied only for such reasons as undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party."

Aetna Cas. & Sur. Co. v. Aniero Concrete Co., 404 F.3d 566, 603 (2d Cir. 2005) (per curiam) (internal quotation marks omitted). The party opposing a motion to amend bears the burden of establishing that an amendment would be futile. *Ouedraogo v. A-1 Int'l Courier Serv., Inc.*, No. 12 Civ. 5651 (AJN), 2013 WL 3466810, at *6 (S.D.N.Y. July 8, 2013). An amendment is not "futile" if it could withstand a motion to dismiss under Rule 12(b)(6). *See, e.g., Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 185 (2d Cir. 2012). Thus, a court must accept the facts alleged by the party seeking amendment as true and construe them in the light most favorable to that party. *Aetna*, 404 F.3d at 604. A proposed claim or defense is futile if it does not "plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

Applying these standards here, Plaintiff's motion to amend is DENIED on the ground of futility. First, Plaintiff's proposed claims under the NYSHRL and the NYCHRL are futile because any such claims are time barred. The statute of limitations for actions under both statutes is three years. *See, e.g., Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 238 (2d Cir. 2007). As Plaintiff was terminated from his employment with Defendant in January 2009, he would have had to bring any claim under the NYSHRL or NYCHRL by January 2012 at the latest; having failed to do so, he cannot bring them now. *See id.* at 238-39.[1] Second, even assuming that Plaintiff could properly add a new defendant at this stage of the case (which has now been pending for over three years and which is nearing the end of discovery), there is no basis to add claims under Title VII against Gaddy, because individuals — even supervisors —

[1] In his reply brief, Plaintiff — who is now represented by counsel — appears to make reference to the fact that in early August 2013, just before obtaining counsel, he asked the Court for permission to add claims under the NYSHRL and the NYCHRL. (Reply Mem. 2-3). The letter itself, however, was filed well after the statute of limitations had run. (Docket No. 44).

are not subject to suit under Title VII. *See, e.g.*, *Mandell v. Cnty. of Suffolk*, 316 F.3d 368, 377 (2d Cir. 2003) ("[U]nder Title VII individual supervisors are not subject to liability.").[2]

As noted, Plaintiff also moves to enjoin Defendant from retaliating against him. Plaintiff's arguments on this score are anything but clear, but there is plainly no basis for injunctive relief, let alone basis for such relief at this stage of the proceedings. First, no injunction is necessary because retaliation is already prohibited by law. Second, Plaintiff has not — through competent evidence — demonstrated a likelihood of success on the merits of his claim, but merely makes conclusory assertions that he has been retaliated against for engaging in protected activity. (Moreover, most, if not all, of those claims relate to his employment and treatment by TRS, which is a separate entity from NYCERS.) Finally, the harm alleged by Plaintiff is the loss of employment, which can be remedied through an award of money damages. For each of those reasons, Plaintiff's request for injunctive relief is DENIED. *See, e.g.*, *UBS Fin. Servs., Inc. v. W. Va. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011) ("A preliminary injunction is an extraordinary remedy never awarded as of right. To prevail on [a] motion for a preliminary injunction, . . . [a party must] demonstrate (a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." (internal quotation marks and citations omitted))

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[2] Some of Plaintiff's allegations appear to relate to his treatment by or at New York City Teachers' Retirement System ("TRS"), where he was employed after his termination by NYCERS. Although he does not appear to be seeking leave to add TRS as a party, any such request would be denied given the stage of this litigation and the tenuous connection, if any, to Plaintiff's claims against NYCERS. *See, e.g.*, *Finley v. Giacobbe*, 79 F.3d 1285, 1298 (2d Cir. 1996) (stating that "it was well within the district court's discretion to deny leave to add a new defendant after more than a year of litigation").

For the foregoing reasons, Plaintiff's request for leave to amend his complaint and to add a party and his request for injunctive relief are DENIED. The Clerk of Court is directed to terminate Docket No. 51.

SO ORDERED.

Dated: November 1, 2013
New York, New York

JESSE M. FURMAN
United States District Judge